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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,015	12/21/2001	Rama Akella	2103.000500	1147
45488	7590 05/05/2005		EXAMINER	
	S, MORGAN & AMER	KAM, CHIH MIN		
	10333 RICHMOND, SUITE 1100 HOUSTON, TX 77042		ART UNIT	PAPER NUMBER
11000101,			1653	

DATE MAILED: 05/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

		Annlinetian No	Amplicant/s)				
Office Action Summary		Application No.	Applicant(s)				
		10/027,015	AKELLA ET AL.				
		Examiner	Art Unit				
		Chih-Min Kam	1653				
Period f	The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply						
THE - Exte after - If th - If NO - Failt Any	MORTENED STATUTORY PERIOD FOR REPI MAILING DATE OF THIS COMMUNICATION ensions of time may be available under the provisions of 37 CFR 1 r SIX (6) MONTHS from the mailing date of this communication. e period for reply specified above is less than thirty (30) days, a re to period for reply is specified above, the maximum statutory period ure to reply within the set or extended period for reply will, by statu reply received by the Office later than three months after the mailined patent term adjustment. See 37 CFR 1.704(b).	136(a). In no event, however, may a reply be ply within the statutory minimum of thirty (30) of will apply and will expire SIX (6) MONTHS from the cause the application to become ABANDO	timely filed days will be considered timely. om the mailing date of this communication. NED (35 U.S.C. § 133).				
Status							
1)	Responsive to communication(s) filed on						
·	<u>_</u>	is action is non-final.					
3)□	3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is						
	closed in accordance with the practice under	Ex parte Quayle, 1935 C.D. 11,	453 O.G. 213.				
Disposit	ion of Claims						
4)🖂	☐ Claim(s) 1-19 is/are pending in the application.						
5 \	4a) Of the above claim(s) is/are withdrawn from consideration.						
·	Claim(s) is/are allowed.						
)□ Claim(s) is/are rejected.)□ Claim(s) is/are objected to.						
	Claim(s) <u>1-19</u> are subject to restriction and/or	election requirement.					
	ion Papers	,					
	·	or					
•	9)☐ The specification is objected to by the Examiner. 10)☐ The drawing(s) filed on is/are: a)☐ accepted or b)☐ objected to by the Examiner.						
,	Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).						
	Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).						
11)	11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.						
Priority (under 35 U.S.C. § 119						
12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of:							
,	1. Certified copies of the priority documents have been received.						
	2. Certified copies of the priority documents have been received in Application No						
	3. Copies of the certified copies of the priority documents have been received in this National Stage						
	application from the International Burea						
* See the attached detailed Office action for a list of the certified copies not received.							
		·					
Attachmen	• •						
	e of References Cited (PTO-892) e of Draftsperson's Patent Drawing Review (PTO-948)	4) ☐ Interview Summa Paper No(s)/Mail					
3) 🔲 Inforr	nation Disclosure Statement(s) (PTO-1449 or PTO/SB/08 r No(s)/Mail Date		Patent Application (PTO-152)				

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DETAILED ACTION

Election/Restrictions

- 1. Restriction to one of the following inventions is required under 35 U. S. C. 121:
 - I. Claims 1-7, drawn to an isolated peptide or an angiogenic composition comprising at least one peptide having cell migration stimulating activity and at least one angiogenic growth factor, classified in class 514, subclass 2, and class 530, subclass 399.
 - II. Claims 8-11, drawn to a method of promoting myocardial angiogenesis comprising administering intramyocardally to an ischemic area of the heart of an individual an angiogenic composition comprising at least one peptide of SEQ ID NO:1, 2, 3 or 4, classified in class 424, subclass 9.1, and class 514, subclass 2.
 - III. Claims 12-15, drawn to a method of promoting peripheral angiogenesis comprising administering to an ischemic area of an organ or tissue of an individual an angiogenic composition comprising at least one peptide of SEQ ID NO:1, 2, 3 or 4, classified in class 424, subclass 9.1, and class 514, subclass 2.
 - IV. Claims 16-19, drawn to a method of enhancing blood flow to an ischemic tissue of the body comprising administering to a defined area of the ischemic tissue an angiogenic composition comprising at least one peptide of SEQ ID NO:1, 2, 3 or 4, classified in class 424, subclass 9.1, and class 514, subclass 2.

Should Group I, II, III or IV be elected, applicant is required to select one peptide (SEQ ID NO:1, 2, 3 or 4) identified with "SEQ ID NO:" from claim 2, 8, 12 or 16, and one angiogenic growth factor from claim 3, 9, 13 or 19. Each peptide which has different amino acid sequence and different activity is patentably distinct. This is not species election.

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2. The inventions are distinct, each from the other because of the following reasons:

The product of Invention I and the methods of Inventions II, III and IV are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the methods of Inventions II, III and IV are alternative processes of use of the product of Invention I.

The methods of Inventions II, III and IV are distinct from each other because the method steps and the outcomes are wholly different among Inventions II, III and IV.

Because Inventions I-IV are distinct for the reasons given above and have acquired a separate status in the art as shown by their recognized divergent subject matter, and because inventions I-IV require different searches but are not co-extensive, examination of these distinct inventions would pose a serious burden on the examiner and therefore restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement is traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

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The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims that depend from or otherwise include all the limitations of the allowable product claim will be rejoined in accordance with the provisions of MPEP § 821.04. Process claims that depend from or otherwise include all the limitations of the patentable product will be entered as a matter of right if the amendment is presented prior to final rejection or allowance, whichever is earlier. Amendments submitted after final rejection are governed by 37 CFR 1.116; amendments submitted after allowance are governed by 37 CFR 1.312.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103, and 112. Until an elected product claim is found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowed product claim will not be rejoined. See "Guidance on Treatment of Product and Process Claims in light of *In re Ochiai, In re Brouwer* and 35 U.S.C. § 103(b)," 1184 O.G. 86 (March 26, 1996). Additionally, in order to retain the right to rejoinder in accordance with the above policy, Applicant is advised that the process claims should be amended during prosecution either to maintain dependency on the product claims or to otherwise include the limitations of the product claims. Failure to do so may result in a loss of the right to rejoinder.

Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chih-Min Kam whose telephone number is (571) 272-0948. The examiner can normally be reached on 8.00-4:30, Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon Weber can be reached at 571-272-0925. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Chih-Min Kam, Ph. D.

Patent Examiner

Chil-

CHIH-MIN KAM PATENT EXAMINER

CMK April 29, 2005